No. 14-1935

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JENNY RUBIN, et al.,

Plaintiffs-Appellants,

v.

ISLAMIC REPUBLIC OF IRAN,

Defendant-Appellee,

FIELD MUSEUM OF NATURAL HISTORY, et al.,

Respondents-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Hon. Robert W. Gettleman

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEES

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STATEMENT OF INTEREST

The United States emphatically condemns the terrorist actions that give rise to this case, and expresses its deep sympathy for the victims and their family members who have pursued legal action against Iran and related entities. The United States is committed to aggressively pursuing those responsible for violence against U.S. nationals.

Against that backdrop, and pursuant to Fed. R. App. P. 29(a), the United States submits this *amicus curiae* brief to address several issues of importance to the government. Aspects of this case concern the proper interpretation and application of the Foreign Sovereign Immunities Act, in which the United States has a substantial interest. Litigation against foreign states in U.S. courts can have significant foreign affairs implications for the United States and can affect the reciprocal treatment of the United States in the courts of other nations. Additionally, certain properties at issue here—the Chogha Mish artifacts—are the subject of a pending international dispute between the United States and Iran. If successful, plaintiffs' attempted attachment of the artifacts, which as we explain is based on a misunderstanding of regulations promulgated and

administered by the Treasury Department's Office of Foreign Assets Control, could threaten the United States's interests in that dispute.

STATEMENT OF THE ISSUES

Plaintiffs hold a judgment against Iran, which they have attempted to collect through attachment of various ancient artifacts, in the possession of Chicago museums. The United States will address the following questions:

1. Whether a plaintiff may use 28 U.S.C. § 1610(a) to attach items that a third party, but not a foreign state, has used in commercial activity.

2. Whether a plaintiff may use 28 U.S.C. § 1610(g) to attach items that were not used in commercial activity.

3. Whether the Chogha Mish artifacts are "blocked" for purposes of the Terrorism Risk Insurance Act.

STATEMENT OF THE CASE

I. Statutory And Regulatory Background

A. Iranian Sanctions Under The International Emergency Economic Powers Act

Under the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1706, the President can impose economic sanctions to respond to "unusual and extraordinary" international threats. 50 U.S.C.

§§ 1701, 1702(a). These sanctions are generally administered by the Treasury Department's Office of Foreign Assets Control ("OFAC").

After the November 1979 seizure of the U.S. Embassy in Tehran, President Carter invoked IEEPA to block transactions in "all property and interests in property of the Government of Iran" that had specified ties to the United States. *Exec. Order No. 12170*, 44 Fed. Reg. 65729 (Nov. 14, 1979). OFAC implemented this order through regulations that prohibited any transaction involving property in which Iran had "any interest of any nature whatsoever," unless authorized by an OFAC license. *See* 44 Fed. Reg. 65956 (Nov. 15, 1979).

The Iranian hostage crisis was ultimately resolved in 1981 by the Algiers Accords, an international agreement between the United States and Iran. *See* Declaration of the Government of the Democratic and Popular Republic of Algeria, U.S.-Iran, Jan. 19, 1981, 20 I.L.M. 224; *United States v. Sperry Corp.*, 493 U.S. 52, 55-56 (1989). Among other things, the United States pledged to "restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979," and agreed to arrange "for the transfer to Iran of all Iranian properties" (subject to certain

conditions). 20 I.L.M. at 224, 227. The Accords also established an international claims tribunal in The Hague ("Claims Tribunal"), to resolve (among other things) claims between the United States and Iran regarding performance under the agreement. *Id.* at 230-32; *see also Dames & Moore v. Regan*, 453 U.S. 654, 662-66 (1981).

The President implemented the Algiers Accords by, *inter alia*, issuing a "Transfer Directive" that directed the transfer of certain Iranian properties to Iran "as directed . . . by the Government of Iran." *Exec. Order No. 12281*, 46 Fed. Reg. 7923, 7923 (Jan. 19, 1981); *see also* 31 C.F.R. § 535.215. Under OFAC's implementing regulations, the properties subject to transfer are all "uncontested and non-contingent liabilities and property interests of the Government of Iran," other than certain kinds of property interests not relevant here. *Id.* § 535.333(a). Properties can only be "contested" if the property holder "reasonably believes that Iran does not have title or has only partial title to the asset." *Id.* § 535.333(c).

B. The Foreign Sovereign Immunities Act And TRIA

1. Under the Foreign Sovereign Immunities Act ("FSIA"), a "foreign state" is generally immune from the jurisdiction of U.S. courts, *see* 28 U.S.C.

§ 1604, except as set out in the immunity exceptions in 28 U.S.C. §§ 1605-1607. Additionally, foreign state property is generally immune from attachment, *see* 28 U.S.C. § 1609, subject to several exceptions codified at 28 U.S.C. § 1610.

Relevant here, Section 1610(a) creates exceptions to immunity for certain "property in the United States of a foreign state . . . used for a commercial activity in the United States." 28 U.S.C. § 1610(a). Section 1610(b) provides various immunity exceptions for "any property in the United States of an agency or instrumentality of a foreign state engaged in a commercial activity in the United States." *Id.* § 1610(b). Both subsections have specific provisions that, subject to these "commercial activity" requirements, authorize attachment by certain terrorism-related judgment holders. *See id.* §§ 1610(a)(7), (b)(3).

Section 1610(g) contains further provisions applicable to some of these terrorism-related judgment holders. Section 1610(g) provides that for such judgment holders, the property of a foreign state and its agency or instrumentality is "subject to attachment in aid of execution, and execution, . . . as provided in this section," regardless of whether the property is

owned by the state itself, or by one of its agencies or instrumentalities. *Id.* § 1610(g).

2. Separately, the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (2002) (codified in relevant part at 28 U.S.C. § 1610 note) has provisions related to attachment. Section 201(a) of the statute provides:

> Notwithstanding any other provision of law . . . , in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under [certain immunity-stripping provisions], the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a).

Generally speaking, "blocked" assets under TRIA include assets "seized or frozen by the United States" under IEEPA. *See* TRIA § 201(d)(2). TRIA thus permits attachment of assets in certain cases where the attachment of those assets might otherwise have been precluded by the

FSIA, or by IEEPA sanctions regimes that prohibit transactions involving blocked property. TRIA permits attachment only if the relevant asset is "blocked."

II. Factual Background And Procedural History

Much of the relevant background is described in *Rubin v. Islamic Republic of Iran*, 637 F.3d 783, 786-87 (7th Cir. 2011). We recite the key points.

1. Plaintiffs hold a judgment against Iran arising out of Iran's role in a 1997 terrorist attack. *See id.* at 786; *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 261-62 (D.D.C. 2003). The judgment was obtained in 2003 under 28 U.S.C. § 1605(a)(7) (2000), a now-repealed provision of the FSIA that provided an exception to foreign states' immunity for certain terrorism-related actions. *Rubin*, 637 F.3d at 786. Subsequently, a district court converted the judgment to one obtained under 28 U.S.C. § 1605A. *See Rubin v. Islamic Republic of Iran*, 270 F.R.D. 7, 9 & n.3 (D.D.C. 2010).

Plaintiffs registered their judgment in the Northern District of Illinois, and thereafter sought to attach various artifacts possessed by the University of Chicago ("University") and the Field Museum of Natural

History ("Field Museum"), collectively "the museums." Plaintiffs believe that Iran owns the targeted artifacts. *See* Rubin Br. 14-18; DE655 at 55.[1]

Some of the targeted artifacts come from what is known as the "Chogha Mish" collection—artifacts recovered in the 1960s on Iran's Chogha Mish plain, and then temporarily loaned by Iran to the University. *Rubin*, 637 F.3d at 787. The parties to this case agree that although most of these artifacts were returned to Iran in 1970, some of the loaned items remain at the University. DE648 at 10; DE657 at 17. The University has pledged to return the remaining artifacts to Iran, DE648 at 10; DE657 at 17, although plaintiffs' attachment efforts complicated the return process. *See* DE11 at 2 (University filing informing the district court that the University would not transfer the Chogha Mish collection, without court approval, while the attachment proceedings were pending).[2]

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[1] Citations to pages in the district court's docket entries are abbreviated "DE__ at __."

[2] This assertion was made early in the litigation, shortly after plaintiffs commenced this collection proceeding and served the University with a "citation to discover assets" under Illinois law, which plaintiffs believed prohibited the transfer of any artifacts. Later, on August 7, 2014, the district court denied a motion to extend the effectiveness of the citation (which was then scheduled to expire by August 15, 2014). DE665; DE685.

The Chogha Mish collection is also the subject of a pending case between Iran and the United States before the Claims Tribunal. In that proceeding, Iran is seeking both the return of the artifacts, and damages from the United States based on the fact that the artifacts have yet to be returned. DE648-4 at 5-6. The United States has not disputed Iran's ownership, and has taken steps to facilitate the return of the items to Iran. DE648-3 at 219.[3]

Plaintiffs also targeted three other artifact collections. One, known as the Persepolis collection, was originally loaned to the University by Iran.

This Court subsequently denied plaintiffs' motion for an emergency stay of the citation's dissolution (by which the plaintiffs sought to prohibit transfer of any artifacts pending an appeal of the extension denial). In light of those developments, there is currently no legal restraint to the University's return of the Chogha Mish collection to Iran. The United States government has since encouraged the University to effectuate the transfer per the transfer directive set out in Executive Order No. 12281 and OFAC's implementing regulations.

[3] Such facilitation is not required, however, by either the Algiers Accords or by OFAC's regulations. Iran has previously implied that the objects cannot be transferred until the State Department directs their return. *See* Opp. to Mot. for Stay Pending Appeal, at 14, *Rubin v. Islamic Republic of Iran*, No. 14-2825 (7th Cir.) (filed Aug. 29, 2014). But any such implication is flatly incorrect; once Iran itself appropriately directs the transfer of its property, a property holder is under a regulatory duty to effectuate that transfer, without the need for any involvement by the State Department. *See* 31 C.F.R. § 535.215.

Rubin, 637 F.3d at 787. Iran "claims no legal interest" in the two additional collections at issue, DE647 at 15, over which the University and the Field Museum respectively claim ownership. DE641 at 8-9.

2. Initially, the museums resisted attachment by arguing (*inter alia*) that the artifacts were immune under the FSIA. *Rubin*, 637 F.3d at 787. The district court held that only Iran could assert immunity (leading to Iran's appearance in the case). *Id.* at 788. This Court reversed, holding that a court must consider whether foreign state property is immune from execution or attachment, regardless of whether the foreign state has appeared and raised a claim of immunity, and vacating a discovery order entered against Iran. *Id.* at 785-86, 799-800.

On remand, Iran and the museums sought summary judgment on the grounds that the artifacts were immune from attachment under the FSIA, and that the artifacts were not blocked assets under TRIA. The United States filed a statement of interest supporting those motions. *See* DE668.

The district court granted summary judgment, holding that neither TRIA nor the FSIA permitted plaintiffs to attach the artifacts. The district court reasoned that 28 U.S.C. § 1610(a) creates an immunity exception only

when commercial activity is conducted by the sovereign itself (and not by a third party). A7-12.[4] Because any arguable commercial activity was conducted by the University or the Field Museum, rather than by Iran, the artifacts could not be attached. A12.

The district court also rejected plaintiffs' argument that Section 1610(g) allowed attachment even if the artifacts had not been used in commercial activity. The court explained that Section 1610(g) subjects property to attachment only "as provided in this section," 28 U.S.C. § 1610(g), and thus incorporates the requirement in Section 1610(a) that foreign state property is subject to attachment only if it is used for a commercial activity in the United States. A15-16.

Finally, the district court concluded that the targeted assets were not "blocked" under TRIA. A16-23. In doing so, the court expressed agreement with OFAC's interpretations of its own regulations. *Id.*

[4] References to pages in appellants' Short Appendix, bound with their brief, are abbreviated "A_."

SUMMARY OF ARGUMENT

Plaintiffs seek to attach various artifacts in the museums' possession, including the Chogha Mish collection, which is the subject of a dispute between Iran and the United States before the Claims Tribunal. But as the district court recognized, plaintiffs rely on a misunderstanding of both the FSIA and the relevant OFAC regulations implementing the Algiers Accords. The United States has filed this brief as *amicus curiae* to explain (1) that 28 U.S.C. § 1610(a) allows attachment only of property used by the foreign state itself for a commercial activity; (2) that 28 U.S.C. § 1610(g) incorporates this "commercial activity" requirement; and (3) the Chogha Mish collection is not a "blocked asset" attachable under TRIA.

1. Plaintiffs err in their interpretation of Section 1610(a), which permits attachment of certain foreign state property "used for a commercial activity in the United States." 28 U.S.C. § 1610(a). Read in context, this textual reference to "use[]" must be understood to require use by the foreign state itself, *not* by a third party. That reading best accords with the FSIA's codified statement of purpose. It also best accords with the "restrictive theory" of sovereign immunity that the FSIA was understood

to codify. And it avoids numerous odd results that would flow from plaintiffs' preferred reading, including the inappropriate conclusion (refuted by the FSIA's legislative history) that the statutory exceptions to attachment immunity are broader than the exceptions to jurisdictional immunity.

2. The Court should also reject plaintiffs' interpretation of Section 1610(g). By its plain text, Section 1610(g) makes clear that it applies only where property is otherwise attachable "as provided in this section." 28 U.S.C. § 1610(g). Section 1610 elsewhere requires that a foreign state's attachable property have been "used for a commercial activity in the United States," *id.* § 1610(a), and Section 1610(g) carries forward this requirement. Plaintiffs contrary arguments contravene the plain text of the statute and would render multiple provisions of the FSIA superfluous.

3. Finally, the Chogha Mish collection is not a blocked asset, since it was subject to transfer under the 1981 transfer directive. Plaintiffs contend that the collection is exempt from transfer (and thus blocked) because it is "contested" within the meaning of OFAC's regulations implementing the Algiers Accords. But the plain meaning of those regulations, as reinforced

by their enactment history, reveals that property is "contested" only if there is a contest between Iran and the property holder; a dispute between Iran and the United States is insufficient. Moreover, the relevant contest must be over "title," not mere possession.

Furthermore, because the Chogha Mish collection was "made subject to" the 1981 transfer directive, it is also not blocked under a 2012 executive order, which specifies that it does not apply to such property. Because the asset is not blocked, plaintiffs may not attach it under TRIA.

ARGUMENT

I. 28 U.S.C. § 1610(a) Provides An Immunity Exception Only For Properties That The Foreign State Itself Used In Commercial Activity

In 28 U.S.C. § 1610(a), the FSIA permits attachment of "[t]he property in the United States of a foreign state, . . . used for a commercial activity in the United States," in certain circumstances. The text of Section 1610(a) does not explicitly state whether the "use[]" of the property for a commercial activity must be by the foreign state, or if it can be by a third party. But as the district court correctly recognized, when Section 1610(a)'s text is read in conjunction with the rest of the FSIA, and in light of the

FSIA's purpose and history, it becomes clear that only the commercial activity of the foreign state itself suffices.[5]

In 28 U.S.C. § 1602, Congress codified its "[f]indings and declaration of purpose" upon enacting the FSIA. That statutory section reflects that, in enacting the statute, Congress sought to conform to its understanding of immunity in international law, under which "states are not immune from the jurisdiction of foreign courts insofar as *their* commercial activities are concerned, and *their* commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with *their* commercial activities." *Id.* (emphases added). Congress's repeated

[5] This brief takes no position on whether either museum was Iran's "agent" for purposes of the FSIA (and if so, whether that fact has legal relevance). We also take no position on whether any of the targeted artifacts were "used for a commercial activity" by the museums (a point the district court did not reach). Should this Court nonetheless reach that latter issue, without remanding to the district court first, the United States respectfully requests an opportunity to consider whether to separately provide its views on the point. We note, however, that plaintiffs have withdrawn their argument that the Chogha Mish collection was used in commercial activity. *See* Rubin Br. 48 n.12.

statutory references to "their" indicate that Congress intended that foreign sovereigns would be taking the actions that would abrogate immunity.[6]

This understanding is consistent with the "restrictive theory" of sovereign immunity, which the FSIA has generally been understood to codify. *See Republic of Austria v. Altmann*, 541 U.S. 677, 690-91 (2004). Under that theory, a sovereign enjoys immunity for its sovereign or public acts, but not with regard to private acts like commercial activity. The theory is partially based on the idea that "subjecting foreign governments to the rule of law in their commercial dealings presents a much smaller risk of affronting their sovereignty than would an attempt to pass on the legality of their governmental acts." *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 703-04 (1976) (plurality opinion); *see also Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614 (1992) (explaining

[6] Plaintiffs assert that it is inappropriate to discern Section 1610(a)'s meaning by looking at the statements of purpose in Section 1602. Rubin Br. 38. But Section 1610(a), like any other statute, "cannot be construed in a vacuum," and its words "must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 132 S. Ct. 1350, 1357 (2012). Moreover, Section 1602 is not legislative history, as plaintiffs wrongly imply. *See* Rubin Br. 38. It is an enacted part of the statute, which passed both houses of Congress and was signed into law by the President.

that the *Alfred Dunhill* plurality opinion "is of significant assistance in construing the scope" of the FSIA). When it is a third party that has engaged in the commercial acts, and the foreign government has not had such dealings, that logic ceases to hold. As a result Section 1610(a) should be read as reaching only property that is used by the foreign state itself for commercial activity; third-party acts are irrelevant. *Accord Flatow v. Islamic Republic of Iran*, 76 F. Supp. 2d 16, 23 (D.D.C. 1999) (recognizing that the FSIA "was designed to subject foreign states to the laws of the United States when they choose to engage in private commercial activity" and explaining that plaintiffs' contrary interpretation "would expose foreign states to far greater liability than was originally contemplated under the Act.").

Plaintiffs' interpretation would also lead to anomalous results contrary to the statutory scheme. As the Fifth Circuit has recognized, if the question were merely whether *any* entity had ever used the property in commercial activity, virtually all property of a foreign state would qualify since most property (whatever its current use by the foreign state) is purchased from private parties who "used" that property in a commercial

transaction when they sold it to the foreign state in the first place. *See Conn. Bank of Commerce v. Republic of Congo*, 309 F.3d 240, 256 n.5 (5th Cir. 2002). *Accord Aurelius Capital Partners LP v. Republic of Argentina*, 584 F.3d 120, 131 (2d Cir. 2009) (recognizing that the commercial activities of companies that managed a foreign state's assets were irrelevant under the FSIA). It is highly unlikely that Congress intended such a result.

Limiting Section 1610(a) to property used for a commercial activity by the foreign state itself is also consistent with the relationship between the FSIA's execution provisions and its jurisdictional provisions. The latter immunity exceptions allow suit where, *inter alia*, the action is "based upon a commercial activity carried on . . . by the foreign state," or certain acts "in connection with a commercial activity of a foreign state." 28 U.S.C. 1605(a)(2). With that in mind, it is important that Congress, starting from a baseline barrier of absolute executional immunity, envisioned at the time of the FSIA's enactment that it was "partially lowering" that barrier so that the attachment immunity set out in Section 1610(a) would "conform more closely" to the jurisdictional immunity provisions in Section 1605(a). *See* H.R. Rep. No. 94-1487, at 27 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604,

6626. Yet because judicial seizure of a foreign state's property was considered a drastic affront to a foreign state's sovereignty at the time the FSIA was enacted, the exceptions to executional immunity are narrower than, and independent from, the exceptions to jurisdictional immunity. *See Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2256 (2014); *Rubin*, 637 F.3d at 796, *De Letelier v. Republic of Chile*, 748 F.2d 790, 798-99 (2d Cir. 1984). Plaintiffs' argument would reverse that well-established rule—it would mean that commercial activity by a third party, which would not support subject matter jurisdiction for purposes of suing a foreign state under § 1605(a)(2), would nevertheless strip the immunity of foreign state property under § 1610(a).

Without addressing this background, plaintiffs rely on the fact that Section 1610(a)'s text differs slightly from Section 1605(a)'s text. Because the latter more explicitly states that the relevant commercial activity must be conducted "by" the foreign sovereign, plaintiffs argue that the less explicit language in Section 1610(a) reflects a desire to apply a looser, different rule in the attachment context. Rubin Br. 33-38.

Plaintiffs read too much into this slight difference in phraseology. In Section 1603, the FSIA defines the term "commercial activity carried on in the United States by a foreign state" as meaning "commercial activity carried on by such state *and having substantial contact with the United States*." 28 U.S.C. § 1603(e) (emphasis added). The obvious intent of this language is to define the necessary nexus between the foreign state's commercial activity (including commercial activity conducted outside this country) and the United States. In contrast, Section 1610(a) requires that foreign state property must be physically located in the United States to be subject to attachment or execution. It does not matter that Congress potentially could have used other language to import such a limitation. *Cf.* Rubin Br. 35-38.

Plaintiffs also err in claiming that the district court's interpretation leaves the statute "internally inconsistent." Rubin Br. 41. They first charge that Section 1610(a)(4)(B), which refers to executions that "relate[] to a judgment establishing rights" in immovable property, plainly cannot be limited to property that the foreign state is using. But that assertion makes no sense. If a foreign government is renting out property held for investment and fails to pay its mortgage, the property could be seized to

enforce a judgment for the lender. In any event, there is nothing odd about saying that if a foreign state owns real property, but does not use it in commercial activity, the property is immune from attachment; this is consistent with the restrictive theory.[7]

Finally, plaintiffs invoke the Supreme Court's recent decision in *NML Capital* and they argue that the government's interpretation improperly re-writes the FSIA's text. *See* Rubin Br. 43-48. But the government is not advocating an atextual approach, and nothing in *NML Capital* indicates that the ordinary tools of statutory construction are inapplicable to the FSIA. *Cf. Weltover*, 504 U.S. at 612-14 (construing the FSIA with reference to the background principles of sovereign immunity against which the statute was enacted). The FSIA includes an exception to attachment immunity for foreign state property "used for a commercial activity in the United States,"

[7] Plaintiffs also cite subsection (a)(5), which allows attachment of a "contractual obligation or any proceeds from such a contractual obligation to indemnify" the foreign state or its employees under a liability policy. 28 U.S.C. § 1610(a)(5); *see* Rubin Br. 43 (arguing that such policies and their proceeds are not "*used* by foreign states"). Plaintiffs' point is not entirely clear. Regardless, under the circumstances of an individual contract at issue an insurance company may stand in the shoes of the foreign state (which may be engaged in commercial activity when it purchases insurance) for purposes of litigating and paying out a judgment.

28 U.S.C. § 1610(a), and the question here turns on the meaning of the quoted phrase. Applying the appropriate tools of statutory construction, the best reading of that phrase is that it refers to use by the foreign sovereign, not by a third party.

II. Section 1610(g) Only Reaches Foreign State Property Used In Commercial Activity

As an alternative argument, plaintiffs contend that they can pursue their attachment under Section 1610(g), even if Iran's property was not used for commercial activity in the United States. Rubin Br. 48-54. The district court correctly rejected plaintiffs' argument.

Under the FSIA's baseline rule, "the property in the United States of a foreign state [is] immune from attachment . . . except as provided" elsewhere in the FSIA. 28 U.S.C. § 1609. Section 1610 goes on to permit attachment in various circumstances, including the one set out in 28 U.S.C. § 1610(a)(7) that plaintiffs have invoked as individuals who hold a terrorism-related judgment and who are pursuing foreign state property. But when dealing with foreign state property, Section 1610 only authorizes attachment when the foreign state's property is used for a "commercial

activity in the United States." *Id.* § 1610(a); *see also id.* § 1610(b) (imposing a "commercial activity" requirement with regard to agency or instrumentality property); *NML Capital*, 134 S.Ct. at 2256.

That "commercial activity" restriction is important, because the plain text of Section 1610(g) indicates that specified property is "subject to attachment . . . *as provided in this section*." 28 U.S.C. § 1610(g)(1) (emphasis added). The referenced "section" is Section 1610, and thus Section 1610(g) incorporates by reference the other requirements for attaching foreign state property provided under Section 1610.[8]

Plaintiffs make no attempt to address the crucial "as provided in this section" language. And the cases they cite, some of which entirely ignore the relationship between Section 1610(g) and other subsections, or address the issue only in dicta, make this similar error. *See, e.g.*, *Peterson v. Islamic*

[8] The "commercial activity" language does not appear in 28 U.S.C. § 1610(e), which waives immunity in certain foreclosure actions with respect to the "vessels of a foreign state." But that exception has no applicability here. And while there is no "commercial activity" language in 28 U.S.C. § 1610(f)(1), Congress permitted the President to waive that rule, *see id.* § 1610(f)(3), and he did so before it took effect. *Presidential Determination 99-1*, 63 Fed. Reg. 59201 (Oct. 21, 1998); *Presidential Determination 2001-03*, 65 Fed. Reg. 66483 (Oct. 28, 2000).

Republic of Iran, 627 F.3d 1117, 1123 n.2 (9th Cir. 2010) (dicta, and no discussion of "commercial activity"); *Estate of Heiser v. Islamic Republic of Iran*, 807 F. Supp. 2d 9, 25-26 (D.D.C. 2011) (no discussion whether Section 1610(g) abrogates "commercial activity" requirements). Indeed, in the Southern District of California case plaintiffs cite, *Ministry of Defense v. Cubic Defense Systems*, 984 F. Supp. 2d 1070 (2013), which is currently on appeal to the Ninth Circuit, the United States has filed an *amicus* brief explaining that the district court misinterpreted Section 1610(g) because it ignored the "as provided in this section" language. Br. For the United States As Amicus Curiae, *Ministry of Defense v. Frym*, No. 13-57182 (9th Cir.) (filed July 3, 2014), at 27-32.

Plaintiffs' reading also would render portions of Section 1610 superfluous, contrary to the "cardinal principle of statutory construction" that a statute should be construed to avoid superfluity. *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotation marks omitted). Both Sections 1610(a)(7) and (b)(3), which concern terrorism-related judgments entered under 28 U.S.C. § 1605A, require some relation to commercial activity on the part of the foreign state's property, or by the foreign state

agency or instrumentality, as a condition of attachment of property in aid of execution. But if Section 1610(g), which also relates to a judgment under Section 1605A, had no such requirement, plaintiffs' view would render the restrictions in Section 1610(a)(7) and (b)(3) superfluous. That cannot be correct.

Despite all of the above, plaintiffs see significance in the fact that Section 1610(g) allows attachment "regardless of" five listed factors. 28 U.S.C. § 1610(g)(1)(A)-(E); *see also* Rubin Br. 51-53. But as this Court has already recognized, *see Gates v. Syrian Arab Republic*, 755 F.3d 568, 576 (7th Cir. 2014), that aspect of the statute merely demonstrates that Section 1610(g) was written to override the multi-factor test created in *First National City Bank v. Banco Para El Comercio Exterior de Cuba* ("*Bancec*"), 462 U.S. 611 (1983), for determining when a creditor can look to the assets of a separate juridical entity (like a state-owned bank engaged in commercial activity) to satisfy a claim against a foreign sovereign. *See id.* at 628-34. Indeed, the five factors listed in the statute paraphrase almost perfectly the so-called *Bancec* factors that courts had sometimes applied to determine if such assets are attachable. *See Flatow v. Islamic Republic of Iran*, 308 F.3d 1065, 1071 n.9 (9th

Cir. 2002); *Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines*, 965 F.2d 1375, 1380 n.7 (5th Cir. 1992). Accordingly, those five factors merely clarify that Iran's judgment creditors can reach properties owned by Iran's agencies and instrumentalities, even if those properties are not directly owned by Iran itself.

Finally, plaintiffs invoke Section 1610(g)(3), which states that Section 1610(g) does not override a court's authority to prevent "the impairment of an interest held by a person who is not liable in the action" that gave rise to a plaintiff's judgment. 28 U.S.C. § 1610(g). Plaintiffs assert that if "the property is held by a third-party, it is not being used by the foreign sovereign" for a commercial activity, which plaintiffs' say demonstrates that Section 1610(a)'s commercial activity requirement need not be satisfied Rubin Br. 53. But property can be *jointly* owned by both a foreign sovereign (or one of its instrumentalities) and an innocent third party. Indeed, the very title of subsection (g)(3)—"Third-party joint property holders"—indicates that Congress had such joint ownership in mind. And that joint ownership status would be perfectly consistent with the sovereign, or its instrumentalities, using property in commercial activity.

III. The Chogha Mish Collection Is Not A "Blocked Asset" Under TRIA

In addition to invoking the FSIA, plaintiffs contend that the targeted artifacts are attachable under TRIA because they are blocked assets.[9] On this point, our brief addresses only the Chogha Mish collection, and takes no position about the blocked status of the remaining artifacts. As to the Chogha Mish collection, the district court was correct in concluding that those artifacts are not "blocked" assets attachable under TRIA.[10]

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[9] The United States does not contest that the plaintiffs can seek to invoke TRIA as a basis for attachment. In *Bank Melli Iran v. Weinstein*, No. 10-947 (S. Ct.), the United States argued that TRIA is categorically unavailable to plaintiffs holding a Section 1605A judgment against a foreign state. Such plaintiffs' sole attachment remedy, the brief explained, arises under Section 1610(g). *See* Brief for the United States as Amicus Curiae, *Bank Melli Iran v. Weinstein*, No. 10-947, 2012 WL 1883085 (May 24, 2012). Subsequently, Congress amended TRIA and added language indicating its applicability to Section 1605A judgment holders. *See* Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, § 502(e), 126 Stat. 1214, 1260 (enacted Aug. 10, 2012). Given this amendment, we do not urge the interpretation of TRIA that we previously advanced in *Bank Melli*.

[10] Indeed, because the Chogha Mish artifacts are not attachable under TRIA, and in light of plaintiffs' concession that those artifacts were not used in commercial activity, *see infra* n.5, the arguments in this brief establish that the Court must reject plaintiffs' attempted attachment of those artifacts.

As noted above, *see supra* p.3, Iranian assets in the United States as of 1979 were initially blocked. When the President later implemented the Algiers Accords in 1981, he mandated the transfer of various previously-blocked properties "as directed . . . by the Government of Iran." *Exec. Order No. 12281*, 46 Fed. Reg. 7923, 7923 (Jan. 19, 1981); *see also* 31 C.F.R. § 535.215. Properties subject to this transfer directive are not considered "blocked" for purposes of TRIA. *See Ministry of Defense v. Elahi*, 556 U.S. 366, 377 (2009).

The parties do not dispute that the Chogha Mish artifacts are Iranian tangible properties that arrived in the United States before 1979. Unless some exception applies, those artifacts were unblocked by the 1981 transfer directive.

Plaintiffs purport to find an exception in OFAC's regulations, which exempt from the transfer directive tangible properties that are not "uncontested and non-contingent . . . property interests of the Government of Iran . . . ." 31 C.F.R. §§ 535.215, 535.333(a). In plaintiffs' view, the Chogha Mish collection is "contested." Br. 56-59. But plaintiffs misunderstand the regulations they invoke. And plaintiffs cannot

overcome the deference to which OFAC is entitled in interpreting regulations that it promulgated and enforces. *See Chase Bank USA, N.A. v. McCoy*, 131 S. Ct. 871, 880 (2011) (agency's interpretation is entitled to deference unless it "is plainly erroneous or inconsistent with the regulation" (internal quotation marks omitted)).

1. As the United States argued and the Claims Tribunal recognized, under OFAC's regulations "Iran was not entitled to possession of properties owned by others or if it had only a partial or contingent interest in such property." *Islamic Republic of Iran v. United States*, 28 Iran-U.S. Cl. Trib. Rep. 112, 127 (1992). To the extent that disputes arose between Iran and a property holder, those disputes could be resolved either in the Claims Tribunal, or in other litigation with Iran if not within the Claims Tribunal's jurisdiction. *See* Algiers Accords, 20 I.L.M. at 230-32 (giving the Claims Tribunal jurisdiction over claims by U.S. nationals against Iran if such claims were "outstanding on [January 19, 1981], whether or not filed with any court, and arise out of debts, contracts . . . , expropriations or other measures affecting property rights"); 31 C.F.R. § 535.504 (authorizing certain judicial proceedings with respect to properties in which Iran has an

interest, when such disputes are not within the Claims Tribunal's jurisdiction). Judged against this backdrop, it is plain that the only contest contemplated by the regulations implementing the Algiers Accords was a contest between Iran and the property holder. *Accord Rubin v. Islamic Republic of Iran*, 709 F.3d 49, 56-58 (1st Cir. 2013) (deferring to OFAC's interpretation of this regulation).

The text of the Executive Order and of the regulation support this reading. Under both, transfer directly to Iran is only as "as directed . . . by the Government of Iran." 46 Fed. Reg. at 7923; 31 C.F.R. § 535.215(a). As a result, the regulation plainly contemplates that Iran itself must direct the transfer of its property. It was only after Iran provided such direction to the property holder that the holder could transfer the property, or contest Iran's interest.

Furthermore, the regulations specify that property interests "may be considered contested *only if the holder thereof* reasonably believes that Iran does not have title or has only partial title to the asset." 31 C.F.R. § 535.333(c) (emphasis added). The focus on "the holder" further shows that the only relevant contest can be between Iran and the property holder.

In this case, plaintiffs have attempted to assert that the Chogha Mish collection is "contested" because it is the subject of a dispute at the Claims Tribunal between Iran and the United States. Rubin Br. 59. Because that dispute is not a contest between Iran and the property holder (here, the University) plaintiffs' assertions are insufficient to render the property blocked.

2. Plaintiffs also assert that the collection is blocked because there is a contest between Iran and the University over when the University must relinquish possession of the artifacts. Rubin Br. 56-59. Even assuming for the sake of argument that plaintiffs are correct as to the current status of any such dispute, that fact would be irrelevant because a mere dispute over possession cannot make the property blocked.

OFAC's regulations explain that property interests "may be considered contested only if the holder thereof reasonably believes that Iran *does not have title* or has *only partial title* to the asset" in question." 31 C.F.R. § 535.333(c) (emphasis added). The regulation's reference to "title" means that a mere dispute over the timing of possession is insufficient. *See, e.g., Merriam-Webster's Collegiate Dictionary* 1234 (10th ed. 2002) (defining

"title" as "all the elements constituting legal ownership"); *Huddleston v. United States*, 415 U.S. 814, 819-21 (1974) (recognizing that a relinquishment of possession is not equivalent to a relinquishment of "ownership and title"); *In re United Air Lines, Inc.*, 453 F.3d 463, 466 (7th Cir. 2006) (recognizing that when one entity leased property to another, the lessor retained "ownership and title" even though the lessee gained possession).

Any ambiguity, moreover, is clarified by the regulation's history. As originally enacted, the regulation defined the term "contested" to allow for a contest whenever the property holder believed he had a right to possession. *See* 46 Fed. Reg. 14335-36 (Feb. 26, 1981). Subsequently, the Claims Tribunal concluded that this aspect of the regulation was inconsistent with the Algiers Accords because it exempted from transfer various properties where the holder "had only a possessory interest" by virtue of a lien, as distinguished from "an ownership right." *Iran v. United States*, 28 Iran-U.S. Cl. Trib. Rep. at 131. OFAC then issued the current version of the regulations "to conform" to the Claims Tribunal's ruling, and it added a new reference to "title." 66 Fed. Reg. 38553, 38553-54 (July

25, 2001). The current reference to "title" is thus plainly a reference to ownership, and not mere possession.

Plaintiffs do not dispute that the University acknowledges Iran's ownership. *See* DE657 at 18.[11] Instead, Plaintiffs only assert that Iran and the University dispute the right to possession. But even if that assertion were true, it would be insufficient to render the property "contested." The collection therefore is not blocked.[12]

3. Plaintiffs finally contend that even if the Chogha Mish collection became unblocked following the Algiers Accords, it later become blocked by a 2012 executive order. Rubin Br. 61. That order blocked (among other things) "[a]ll property and interests in property of the Government of Iran . . . that are in the United States." *Exec. Order No. 13599*, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012); *see also* 31 C.F.R. § 560.211(a). But it also exempted

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[11] Plaintiffs' district court filing did assert that there was a dispute over "ownership," but it did so based on plaintiffs' assertion that possession was disputed. *See* DE657 at 18. Under OFAC's regulation, the two are not equivalent.

[12] Moreover, because a dispute over mere possession is insufficient, the pending Claims Tribunal case is irrelevant for the additional reason that neither Iran nor the United States has ever disputed that Iran owns and has title to the collection. In fact, the United States has taken steps to arrange transfer of the collection to Iran. *See* DE648-3 at 217-40.

Iranian property that was blocked in 1979, and "thereafter made subject to the transfer directives set forth in Executive Order 12281." 77 Fed. Reg. at 6660.

It does not matter that the Chogha Mish collection has yet to physically arrive in Iran. The question is merely whether it was "made subject to" the transfer directive. 77 Fed. Reg. at 6660. Because the collection was the type of property that the President required to be transferred as directed by Iran, it was exempt from the 2012 executive order's blocking provision regardless of whether Iran properly directed its transfer or whether the University properly effectuated such transfer.

CONCLUSION

For the foregoing reasons, this Court should hold (1) that 28 U.S.C. § 1610(a) only permits attachment when a foreign state itself uses property for a commercial activity (and the other requirements of the subsection are satisfied); (2) that 28 U.S.C. § 1610(g) does not abrogate the otherwise applicable "commercial activity" requirement contained in Section 1610(a); and (3) the Chogha Mish collection is not "blocked" under TRIA.

Respectfully submitted,

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November 3, 2014

CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Book Antiqua, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains **6971 words**, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

/s/ Benjamin M. Shultz
BENJAMIN M. SHULTZ

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2014, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system, which constitutes service on all parties under the Court's rules because all participants in the case are registered CM/ECF users..

/s/ Benjamin M. Shultz
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ADDENDUM

ADDENDUM CONTENTS

Terrorism Risk Insurance Act (TRIA), Pub. L. No. 107-297, § 201 (excerpts)

SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

. . .

(d) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ACT OF TERRORISM.—The term "act of terrorism" means—

(A) any act or event certified under section 102(1); or

(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

(2) BLOCKED ASSET.—The term "blocked asset" means—

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United

States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

(3) CERTAIN PROPERTY.—The term "property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" and the term "asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

(4) TERRORIST PARTY.—The term "terrorist party" means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

28 U.S.C. § 1602

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

28 U.S.C. § 1603 (excerpts)

For purposes of this chapter—

. . .

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

28 U.S.C. § 1605(a) (excerpts)

A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

. . .

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

. . .

28 U.S.C. § 1610

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property-

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: Provided, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section

was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if--

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and
(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.
(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries--

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) Waiver.--The President may waive any provision of paragraph (1) in the interest of national security.

(g) Property in certain actions.--

(1) In general.--Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of--

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) United States sovereign immunity inapplicable.--Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) Third-party joint property holders.--Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

31 C.F.R. § 535.215

(a) Except as provided in paragraphs (b) and (c) of this section, all persons subject to the jurisdiction of the United States in possession or control of properties, as defined in § 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities, are licensed, authorized, directed and compelled to transfer such properties held on January 18, 1981 as directed after that day by the Government of Iran, acting through its authorized agent. Such directions shall include arrangements for payment of the costs of transporting the properties, unless the possessors of the properties were required to pay such costs by contract or applicable law on January 19, 1981. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

(b) Any properties subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

(c) Notwithstanding paragraph (a) of this section, persons subject to the jurisdiction of the United States, including agencies, instrumentalities and entities controlled by the Government of Iran, who have possession, custody or control of blocked tangible property covered by § 535.201, shall not transfer such property without a specific Treasury license, if the export of such property requires a specific license or authorization pursuant to the provisions of any of the following acts, as amended, or regulations in force with respect to them: the Export Administration Act, 50 U.S.C. App. 2403, et seq., the Aims Export Control Act, 22 U.S.C. 2751, et seq., the Atomic Energy Act, 42 U.S.C. 2011, et seq., or any other act prohibiting the export of such property, except as licensed.

31 C.F.R. § 535.333

(a) The term properties as used in § 535.215 means all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities, including debts. It does not include bank deposits or funds and securities. It also does not include obligations under standby letters of credit or similar instruments in the nature of performance bonds, including accounts established pursuant to § 535.568.

(b) Properties do not cease to fall within the definition in paragraph (a), above, merely due to the existence of unpaid obligations, charges or fees relating to such properties, or undischarged liens against such properties.

(c) Liabilities and property interests of the Government of Iran, its agencies, instrumentalities, or controlled entities may be considered contested only if the holder thereof reasonably believes that Iran does not have title or has only partial title to the asset. After October 23, 2001, such a belief may be considered reasonable only if it is based upon a bona fide opinion, in writing, of an attorney licensed to practice within the United States stating that Iran does not have title or has only partial title to the asset. For purposes of this paragraph, the term holder shall include any person who possesses the property, or who, although not in physical possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a holder by virtue of being the beneficiary of an attachment, injunction or similar order.

(d) Liabilities and property interests shall not be deemed to be contested solely because they are subject to an attachment, injunction, or other similar order.